

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND
OPPORTUNITY TO COMMENT ON CLEAN WATER ACT CONSENT AGREEMENT**

Purpose of Public Notice

The purpose of this notice is to state the United States Environmental Protection Agency's (EPA) intention to assess an administrative penalty against:

Kenneth L. Schell, and
Twin Peaks Excavating, Inc.
883 State Highway 52
Erie, CO 80516

for violations of the Clean Water Act (CWA) along Rock Creek, Boulder County, Colorado, and give the public the opportunity to comment on the proposed consent agreement.

Process Information

Under the CWA, EPA is authorized to issue orders assessing civil penalties for violations of the statute. 33 U.S.C. § 1319(g). EPA may issue such an order after the commencement of an administrative penalty proceeding. As required by law, EPA is hereby providing public notice of the proposed consent agreement. 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45(b).

Administrative enforcement proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. part 22. The procedures through which the public may submit written comment on a proposed consent agreement, participate in a proceeding, and by which a respondent may request a hearing, are set forth in the Consolidated Rules. 40 C.F.R. § 22.45. The proposed consent agreement has been entered into by the parties for the purpose of simultaneously commencing and concluding this matter as authorized by 40 C.F.R. § 22.13(b) and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The deadline for submitting public comment on a proposed consent agreement is forty (40) days after the date of this public notice.

Case Summary.

The case against Kenneth L. Schell and Twin Peaks Excavating, Inc., ("Respondents"), Docket No. CWA-08-2008-0025, was filed on September 11, 2008. The action is the filing of a Consent Agreement with a proposed penalty of \$35,000 for the unpermitted discharges of dredged and/or fill material into Rock Creek and its adjacent wetlands on open space property owned by the City of Lafayette in Boulder County, Colorado, in Section 12, Township 1 South, Range 69 West. The unpermitted discharges began some time in March or April 2007 as part of bank stabilization and erosion control activities. Rock Creek and its adjacent wetlands are, and were at all relevant times, waters of the United States.

To resolve the environmental harm caused by these unpermitted discharges, EPA previously issued a Findings of Violation and Order for Compliance (“Order”), Docket No. CWA-08-2008-0004, to Kenneth L. Schell, and Twin Peaks Excavating, Inc. on December 19, 2007. Pursuant to that Order, the Respondents submitted a Restoration Plan, which proposed restoration and mitigation of the impacted waters and wetlands. On March 31, 2008, EPA granted approval of the plan. The Respondents are currently implementing the EPA-Approved plan.

Further Information and Comments

Persons wishing to receive a copy of any documents filed in these proceedings, comment upon the proposed consent agreement, or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk, Tina Artemis, U.S. Environmental Protection Agency, Region 8 (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone: 303.312.6765. Written comments on this proposed consent agreement must be directed to the Regional Hearing Clerk by the deadline set forth above in this public notice. For technical questions, contact Kenneth Champagne 303.312.6608, Technical Enforcement Program, at champagne.kenneth@epa.gov, the same EPA address above, or 303.312.6608. Persons with legal questions may contact Thomas Sitz, Legal Enforcement Program, at sitz.thomas@epa.gov, or 303.312.6918.

The case docket for this proceeding is located in the EPA - Region 8 office identified above and the file will be open for public inspection during normal business hours. Written comments submitted by the public as well as all information submitted by the Respondents are available as part of the case docket, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, no final order assessing a penalty in these proceedings will be issued prior to **40 calendar days after publication of this notice.**

September 17, 2008

Date of Publication